

REMARKS

Claims 1-57 are currently pending. Claims 1, 22, and 42 have been amended, and claims 21, 41, and 57 have been cancelled. Claims 1, 22, and 42 have been amended to incorporate the limitations from cancelled claims 21, 41 and 57, respectively. No new subject matter has been added by this amendment.

1. Rejection of Claims Under 35 U.S.C. §102(b) or §103(a) over Tsaur (¶5)

Reconsideration is requested of the rejection of claims 1-7, 10-18, 22-27, 30-38, 42-47, and 51-54 under 35 U.S.C. §102(b) as being anticipated by Tsaur (U.S. Patent No. 6,126,954).

Claim 1 is directed to a liquid cleanser composition comprising a lamellar structured liquid comprising from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a lipid phase, and from about 19% (by weight) to about 69% (by weight) water. The lipid phase comprises from about 1% (by weight) to about 5% (by weight) of a sterol and from about 95% (by weight) to about 99% (by weight) of a natural fat or oil, and the liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps. The components of the lipid phase are microencapsulated.

Tsaur discloses a stable aqueous liquid comprising 5 to 45% by weight surfactant (selected from anionic, amphoteric, and nonionic), 0.1 to 5.0% by weight dispersed particles of cationic polymer, 1 to 30% by weight of a skin benefit agent emulsion having particle sizes in the range of about 0.1 to about 10 micrometers, and 1-30% by weight of water soluble skin benefit

agents. Liquid stability is achieved through the interaction of dispersed cationic polymer particles and the small particle benefit agent emulsion. Upon dilution with water, the dispersed cationic particles dissolve and interact with the benefit agent to form large oil aggregates, allowing for enhanced deposition of the benefit agent onto the skin. Significantly, Tsaur does not disclose a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid and a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol, wherein the components of the lipid phase are microencapsulated.

As stated in M.P.E.P. §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. In the instant case, as stated above, Tsaur fails to disclose a lamellar structured liquid or a liquid cleanser composition comprising a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol and having a viscosity of from about 10,000 cps to about 200,000 cps, wherein the components of the lipid phase are microencapsulated.

As discussed in the specification of the present invention, the claimed liquid cleanser compositions are formulated such that the surfactant present forms a lamellar phase in solution; that is, the surfactant forms lamellar-like sheets in the solution that form together like layers of an onion that prevent the skin benefit ingredient from raising to the surface or falling to the bottom of the composition. Because the lamellar structured liquids allow for long-term suspension therein of droplets of oils, particulates, or other components,

emulsification of the suspended ingredient is not required to keep the suspended ingredient from settling out.¹

In contrast to the lamellar structured liquids of the present invention, Tsaur describes stable liquid cleansers that comprise a skin benefit agent emulsion. More particularly, Tsaur state that the dispersed polymer particles and an emulsion of benefit agents interact to provide the physical stability of the liquid composition and to keep the benefit agents from precipitating out of the composition.² There is no disclosure or suggestion of using a lamellar structured liquid to suspend benefit agents in the composition.

Additionally, Tsaur, et al. fail to disclose or suggest a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps. With regard to viscosity, the Office has stated that Tsaur teaches that the pre-dispersion compositions have a viscosity of less than 100,000 cps. This, however, is not the viscosity of the cleansing composition disclosed in Tsaur. As noted above, the viscosity amounts cited by the Office refers to the pre-dispersion viscosity. More particularly, Tsaur states that cationic polymer is added to the liquid cleanser as a pre-dispersion that is prepared by mixing the solid polymer with water mixable ingredients (e.g., glycerol or propylene glycol) or an aqueous solution. It is the viscosity of this pre-dispersion that is given in column 6 of Tsaur, not the viscosity of the stable aqueous liquid in which the benefit agents are suspended. There is simply no disclosure of the viscosity of the stable aqueous composition.

¹ See Specification at ¶14-15.

² See Tsaur at col. 6, line 61 to col. 7, line 6.

Additionally, Tsaur fails to disclose a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol. Tsaur states that cholesterol may be a benefit agent, but does not state what portion of the benefit agent emulsion may be cholesterol. Furthermore, Tsaur neither discloses nor suggests microencapsulating any of the components of the composition described therein.

Since Tsaur fails to set forth each and every element of claim 1, and in particular fails to disclose or suggest a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid and a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol, wherein the components of the lipid phase are microencapsulated, claim 1 is patentable under 35 U.S.C. §102(b) over Tsaur.

In the alternative, the Office has stated that if Tsaur does not anticipate the claimed invention, it would have been obvious to combine the components disclosed in Tsaur to specifically teach the claimed invention, absent a showing to the contrary. Applicants respectfully disagree, and submit that claim 1 is not obvious in view of the Tsaur reference.

As stated in M.P.E.P. §2143, in order for the Office to show a *prima facie* case of obviousness, the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference; and (3) there must be some reasonable expectation of success. Applicants assert that the Office has not, and cannot, meet the burdens of numbers (1) and

(2) above, which require the Office to show each and every limitation of Applicant's invention and motivation to modify the cited reference.

Initially, applicants submit that Tsaur does not teach or suggest each and every limitation of applicants' claims. For instance, as noted above, Tsaur fails to teach or suggest a liquid cleanser comprising a lamellar structured liquid. Rather, Tsaur describes a composition that achieves stability through the interaction of suspended cationic polymers with a benefit agent emulsion. There is nothing in Tsaur that suggests the compositions therein should comprise a lamellar structured liquid or that a lamellar structured liquid is desirable or even necessary to achieve stable suspension of the benefit agents.

Nor would one skilled in the art be motivated to modify the teachings of Tsaur to arrive at a liquid cleanser composition comprising a lamellar structured liquid. As discussed above, the lamellar structured liquids of the present invention are advantageously able to stably suspend oils, particulates, or other components therein for long periods of time without the suspended ingredient rising to the surface or falling to the bottom of the composition. This is done without the need for emulsifying the suspended ingredient into the liquid. This is advantageous, as the skin benefit ingredient can be more easily transferred to the skin during use of the product, since an emulsion does not have to be broken for the skin benefit ingredient to reach the surface of the skin.

In contrast, the compositions of Tauser require the use of a benefit agent emulsion. It is the interaction of this emulsion with the suspended cationic polymers that allows the composition of Tsaur to achieve stability. There is nothing in

Tsaur to suggest that stability can be achieved in the absence of an emulsion by using a lamellar structured liquid, or that any other means of achieving suspension are desired or required. One skilled in the art thus would not be motivated to modify the teachings of Tsaur to arrive at a liquid cleanser comprising a lamellar structured liquid.

Additionally, Tsaur fails to describe a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps. As noted above, the only disclosure of viscosity provided by Tauser is the viscosity of the cationic polymer containing pre-dispersion. This, however, is not a disclosure of the viscosity of the stable aqueous liquid having benefit agents suspended therein.

Furthermore, one skilled in the art would not be motivated to modify the teachings of Tsaur to arrive at a composition having applicants' claimed viscosity range. As discussed in the specification of the present invention, the stability of the structured liquid composition and the suspension of the oil or particulate skin benefit ingredient is significantly achieved by the viscosity of the liquid composition produced by the surfactant system present in the lamellar phase. Within the claimed viscosity ranges, the structured liquid cleansing product is stable and can suspend the skin benefit ingredient therein such that emulsification is not required to keep the skin benefit ingredient in the solution. In contrast, there is nothing in Tsaur that suggests that the stability of the compositions is dependent on viscosity of the composition, and nothing that would suggest to one skilled in the art that the compositions described therein should have a viscosity within applicants' claimed range.

Additionally, as noted above, Tsaur also fails disclose or suggest a composition comprising a lipid phase that comprises from about 1% (by weight) to about 5% (by weight) of a sterol. Nor does Tsaur disclose or suggest microencapsulating any of the components of the composition described therein.

In light of the foregoing, applicants submit that claim 1 is patentable over the Tsaur reference under §102(b) and §103(a).

Claims 2-7 and 10-18 depend directly or indirectly from claim 1 and are thus patentable over Tsaur for the same reasons as set forth above for claim 1 as well as for the additional elements they require.

Amended claim 22 is similar to claim 1, except instead of a lipid phase, the composition of claim 22 comprises from about 1% (by weight) to about 30% (by weight) of a skin protectant, wherein the skin protectant is microencapsulated.

Claim 22 is patentable over Tsaur for similar reasons as those set forth above for claim 1, as well as for the additional elements it requires. In particular, Tsaur fails to disclose a liquid cleansing composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid and a microencapsulated skin protectant. Nor would there be any motivation for one skilled in the art to modify the teachings of Tsaur to arrive at such a composition. Additionally, Tsaur neither discloses nor suggests microencapsulating any of the components of the composition described therein. As such, claim 22 is patentable over the cited reference under §102(b) and in the alternative under §103(a).

Claims 23-27 and 30-38 depend directly or indirectly from claim 22 and are therefore patentable over the cited reference for the same reasons as set forth above for claim 22 as well as for the additional elements they require.

Amended claim 42 is similar to claim 1, except that instead of a lipid phase, the composition comprises from about 1% (by weight) to about 30% (by weight) of a microencapsulated sunscreen active.

Claim 42 is patentable over the cited reference for similar reasons as set forth above for claim 1 as well as for the additional elements it requires. In particular, Tsaur fails to disclose a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid and a microencapsulated sunscreen active. Nor is there any motivation to modify the teachings of Tsaur to arrive at applicants' claimed composition. Additionally, Tsaur neither discloses nor suggests microencapsulating any of the components of the composition described therein.

Claims 43-47, and 51-54 depend directly or indirectly from claim 42 and are thus patentable over the cited reference for the same reasons as set forth above for claim 42 as well as for the additional elements they require.

2. Rejection of Claims Under 35 U.S.C. §103(a) over Tsaur and Mitra, et al. (¶6)

Reconsideration is requested of the rejection of claims 8-9, 28-29, and 48-50 under 35 U.S.C. §103(a) as being unpatentable over Tsaur (U.S. Patent No. 6,126,954) in view of Mitra (WO 01/19949).

Tsaur is discussed above.

Mitra, et al. disclose liquid cleansing compositions in lamellar phase, which possess a lotion-like appearance. The compositions use low salt levels in amphoteric and anionic surfactants in a structured liquid product to improve the freeze/thaw stability of the composition. Specifically, the compositions comprise a surfactant system that preferably contains at least about 5 wt.% of surface active compounds. The composition also comprises an amphoteric and/or zwitterionic surfactant present at about 3 to 30 wt.%, at least one or more anionic surfactant present at about 2 to 40 wt.%, and a lamellar structurant compound present at about 0.5 to 10 wt.%. The composition has an initial viscosity in the range of about 15,000 to 300,000 cps measured at 0.5 RPM.

Claims 8-9 depend from independent claim 1; claims 28-29 depend from independent claim 22, and claims 48-50 depend from independent claim 42. Claims 8-9, 28-29, and 48-49 further specify specific surfactants present in the claimed compositions, and claim 50 specifies specific sunscreen actives. Claims 1, 22, and 42 have not been rejected under 35 U.S.C. §103(a) over the combination of Tsaur and Mitra, et al. Therefore, claims 8-9, 28-29, and 48-50, which depend from claims 1, 22, and 42, respectively, are patentable for the same reasons as claims 1, 22, and 42.

In particular, applicants submit that neither of the cited references disclose or suggest microencapsulating any of the components of the compositions described therein. Furthermore, nowhere in the cited references is there motivation or suggestion to modify or combine the references to arrive at a composition wherein lipid phase components, skin protectants, or

sunscreen actives are microencapsulated. There is simply no suggestion in either reference that the composition components described therein could or should be microencapsulated, and no recognition of the benefits of microencapsulating. As neither of the cited references provide any guidance as to microencapsulating, this element of applicants' claims 1, 22, and 42 is completely lacking in both Tsaur and Mitra, et al.

Furthermore, with regard to claim 1, the cited references fail to disclose or suggest a liquid cleanser composition comprising a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol.

Claims 1, 22, and 42 thus cannot be said to be obvious in view of the cited references. As noted above, claims 8-9, 28-29, and 48-50 depend either directly or indirectly from claims 1, 22, and 42, respectively, and are thus patentable over the cited references for the same reasons as set forth above for claims 1, 22, and 42 as well as for the additional elements they require.

2. Rejection of Claims Under 35 U.S.C. §103(a) over Tsaur and Barry, et al. (¶6)

Reconsideration is requested of the rejection of claims 19-20, 39-40, and 55-56 under 35 U.S.C. §103(a) as being unpatentable over Tsaur (U.S. Patent No. 6,126,954) in view of Barry, et al. (U.S. Patent No. 3,829,563).

Tsaur is discussed above.

Barry, et al. is directed to cleansing compositions for the hair and skin, which deposit an emollient, conditioning film thereon during washing. The compositions are oil-in-water emulsions and may be in a liquid or semi-solid form. In

particular, the compositions comprise from about 10 to about 70 percent by weight petrolatum, from about 5 to about 30% by weight of one or more organic foaming detergents, from about 1 to about 10 percent by weight of an emulsifier, from about 0.5 to about 5 percent by weight of an organic foam stabilizer, from about 0 to about 20 percent by weight of one or more emollient substances other than petrolatum, and water.

Claims 19-20 depend from independent claim 1; claims 39-40 depend from independent claim 22, and claims 55-56 depend from independent claim 42. Claims 19-20, 39-40, and 55-56 further specify that the liquid cleanser composition comprises from about 0.1% (by weight) to about 4% (by weight) of a surfactant having an HLB of from about 4 to about 8 (claims 19, 39, and 55), and set forth specific examples of such surfactants (claims 20, 40, and 56). Claims 1, 22, and 42 have not been rejected under 35 U.S.C. §103(a) over the combination of Tsaur and Barry, et al. Therefore, claims 19-20, 39-40, and 55-56, which depend from claims 1, 22, and 42, respectively, are patentable for the same reasons as claims 1, 22, and 42. In particular, the cited references fail to disclose or suggest a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid, and fail to disclose or suggest microencapsulation of any of the components of the compositions described therein. Furthermore, no where in the cited references is there motivation or suggestion to modify or combine the reference to arrive at each and every limitation of claims 1, 22, and 42.

As discussed above, the liquid cleanser compositions of the present invention are formulated such that the surfactant present forms a lamellar phase in solution. This allows for

long-term suspension of droplets of oils, particulates, or other components without emulsification of the suspended ingredient.³

In contrast to the lamellar structured liquids of the present invention, Tsaur describes stable liquid cleansers that comprise a skin benefit agent emulsion. More particularly, Tsaur state that the dispersed polymer particles and an emulsion of benefit agents interact to provide the physical stability of the liquid composition and to keep the benefit agents from precipitating out of the composition. There is no disclosure or suggestion of using a lamellar structured liquid to suspend agents in the composition.

Nor do Barry, et al. disclose or suggest compositions comprising lamellar structured liquids. As noted above, Barry, et al. is directed to oil-in-water emulsions that may be used as cleansing compositions. There is no disclosure or suggestion anywhere in Barry, et al. that the compositions described therein could or should comprise lamellar structured liquids. With regard to the stability of the compositions in Barry, et al., Barry, et al. state that the particle size distribution of the oil phase of the oil-in-water emulsions must be within certain limits for maximum physical stability and functional efficacy.⁴

Additionally, neither of the cited references disclose or suggest compositions having a viscosity of from about 10,000 cps to about 200,000 cps. As discussed above, the only disclosure of a viscosity in Tsaur is on column 6, which refers to the viscosity of the pre-dispersion, not the viscosity of the stable aqueous liquid in which the skin benefit agents are suspended.

³ See Specification at ¶14-15.

⁴ See Barry, et al. at col. 2, lines 12-15.

There is simply no disclosure of the viscosity of the stable aqueous composition in Tsauro. Nor do Barry, et al. provide any guidance as to the viscosity of the oil-in-water emulsions described therein. Additionally, applicants note that neither of the cited references recognizes the benefits of compositions having a viscosity as set forth in applicants' claims, and in particular fail to recognize the relationship between viscosity and formation of lamellar structured liquids.

Nor do Tsauro or Barry, et al. teach or suggest encapsulating any of the composition components described therein.

Since neither Tsauro nor Barry, et al. teach or suggest compositions comprising lamellar structured liquids, compositions having the claimed viscosity, or microencapsulation, applicants submit claims 1, 22, and 42 are patentable over the cited references.

As noted above, claims 19-20, 39-40, and 55-56 depend from claims 1, 22, and 42, respectively, and are therefore patentable over the cited references for the same reasons as set forth above for claims 1, 22, and 42 as well as for the additional elements they require.

CONCLUSION

In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. The Commissioner is hereby authorized to charge any fee deficiency in connection with this Response to Office Action to Deposit Account Number 19-1345 in the name of Senniger Powers.

Respectfully submitted,

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